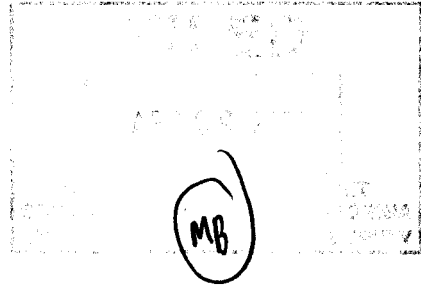


KAREN P. HEWITT
United States Attorney
W. MARK CONOVER
Assistant United States Attorney
California State Bar No. 236090
United States Attorney's Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101
Telephone: (619) 557-5200

Attorneys for Plaintiff
UNITED STATES OF AMERICA



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

08CR 1338 JM

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ALBERTO PONCE-FIMBRES,)
)
Defendant.)

Magistrate Case No. 08MJ1134

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

IT IS HEREBY STIPULATED AND AGREED between the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and W. Mark Conover, Assistant United States Attorney, and defendant ALBERTO PONCE-FIMBRES, by and through and with the advice and consent of Leila Morgan, counsel for defendant, that:

1. Defendant agrees to execute this stipulation on or before the first preliminary hearing date and to participate in a full and complete inquiry by the Court into whether defendant knowingly, intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead guilty to the pre-indictment information charging defendant with a non-mandatory minimum count of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii) and (v)(II).

//

WMC:jam:4/16/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **May 14, 2008**.

6 4. The material witnesses, Roberto Lopez-de la Cruz, Luis Pacheco-Haro, and Hugo
7 Eduardo Martinez-Pacheco, in this case:

8 a. Are aliens with no lawful right to enter or remain in the United States;

9 b. Entered or attempted to enter the United States illegally on or about
10 April 12, 2008;

11 c. Were found in a vehicle driven by defendant near Campo, California and that
12 defendant knew or acted in reckless disregard of the fact that they were aliens with no lawful right
13 to enter or remain in the United States;

14 d. Were paying or having others pay on their behalf \$1,000 to others to be
15 brought into the United States illegally and/or transported illegally to their destination therein; and,

16 e. May be released and remanded immediately to the Department of Homeland
17 Security for return to their country of origin.

18 5. After the material witnesses are ordered released by the Court pursuant to this
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,
21 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

22 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
23 substantive evidence;

24 b. The United States may elicit hearsay testimony from arresting agents
25 regarding any statements made by the material witness(es) provided in discovery, and such testimony
26 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest
27 of (an) unavailable witness(es); and,

1 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
 2 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
 3 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
 4 waives the right to confront and cross-examine the material witness(es) in this case.

5 6. By signing this stipulation and joint motion, defendant certifies that defendant has
 6 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
 7 further that defendant has discussed the terms of this stipulation and joint motion with defense
 8 counsel and fully understands its meaning and effect.

9 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
 10 immediate release and remand of the above-named material witness(es) to the Department of
 11 Homeland Security for return to their country of origin.

12 It is STIPULATED AND AGREED this date.

13 Respectfully submitted,

14 KAREN P. HEWITT
 15 United States Attorney

16 Dated: 4/29/08

17 *for* W. Mark Conover
 18 Assistant United States Attorney

18 Dated: 4/28/2008

19 Leila Morgan
 20 LELA MORGAN
 21 Defense Counsel for Alberto Ponce-Fimbres

21 Dated: 4/28/2008

22 Alberto Ponce
 23 ALBERTO PONCE-FIMBRES
 24 Defendant

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 4/29/08


United States Magistrate Judge